

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GEORGE SIMONSEN,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

Civ. No. 07-CV-339-TC

ORDER AND OPINION

Coffin, Magistrate Judge:

Plaintiff, George Simonsen, seeks review of a final decision of the Commissioner denying his application for Supplemental Security Income disability benefits under 42 U.S.C. §§ 1381-1383f. Before the court is plaintiff's brief (#10). For the reasons that follow, the decision of the Commissioner is reversed and the matter remanded.

Background

Plaintiff applied for SSI benefits, citing a number of mental and physical complaints. His claim was denied initially

1 and upon reconsideration. Plaintiff represented himself at a
2 hearing before the ALJ; the record reveals a collection of
3 evidence from plaintiff's counselors, physicians, and lay
4 witnesses concerning his various physical and mental limitations.

5 The ALJ concluded that although plaintiff had a number of
6 severe impairments (drug addiction, an adjustment disorder with
7 anxiety, anti-social personality disorder, and hepatitis C), his
8 impairment did not meet or equal the requirements of a listed
9 impairment and he was able to perform work existing in
10 significant numbers in the national economy. Tr. 23.

11 Discussion

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13 Plaintiff asserts a number of grounds for reversal. Because
14 the court reverses on the first asserted ground, which may affect
15 the determination of plaintiff's impairment on remand (and
16 determinations at subsequent steps on remand) the court does not
17 address plaintiff's subsequent arguments, which concern findings
18 at steps 4 and 5.

19 Plaintiff asserts that the ALJ erred in rejecting two
20 opinions of treating mental health counselors. Kelly Goodman, a
21 licensed clinical social worker, opined that plaintiff was unable
22 to perform substantial gainful activity. A counselor at Central
23 City Concern who interviewed plaintiff assigned a GAF (Global
24 Assessment of Functioning) equal to or greater than 50, which
25 indicates either "serious symptoms or any serious impairment in
26 social, occupational or school functioning," or "moderate
27 symptoms or moderate difficulty in social, occupation or school
28 functioning." Tr. 21, 354, 373.

1 The ALJ rejected Goodman's opinion in part because it
2 "contrasts sharply with other evidence of record, which also
3 renders it less persuasive." Tr. 21. Because other evidence in
4 the record indeed indicated that plaintiff could lift, work in
5 certain capacities, and function in certain daily tasks, the
6 court does not agree that the ALJ erred in rejecting the opinion
7 on that basis.

8 However, with respect to both of the opinions at issue, the
9 ALJ stated, "the treatment notes and assessments from a mental
10 health counselor, without concurrent review and signature from a
11 medical doctor, are not considered to be from an 'acceptable
12 medical source.'" Tr. 21. Under 20 C.F.R. § 416.913(d) such
13 assessments are among "other sources" that a claimant might
14 employ to show the severity of an impairment or its effect on
15 one's ability to work. The ALJ did not further consider the
16 Central City Concern counselor's interview and diagnostic
17 records.

18 Rejecting the assessments on the sole basis that they are
19 not "acceptable medical sources" under 20 C.F.R. § 416.913(a)
20 violates the ALJ's obligation to consider relevant evidence. See
21 Jager v. Barnhart, 192 Fed. Appx. 589 (9th Cir. 2006) (ALJ erred
22 in rejecting other source evidence where relevant to claimant's
23 ability to work); Fernandez v. Barnhart, 68 Fed. Appx. 820 (9th
24 Cir. 2003) ("Under this circuit's precedent, an ALJ must either
25 consider the testimony of such a lay witness [providing "other
26 source" evidence under 20 C.F.R. § 416.913(d)] or provide germane
27 reasons for not crediting the testimony."). Thus, the ALJ erred
28 in rejecting the opinion of the Central City Concern counselor.

3 Opinion and Order

1 Plaintiff further asserts that the ALJ erred in rejecting
2 lay opinion testimony from plaintiff's sister-in-law, Elaine
3 Simonsen. The record indicates that the ALJ reviewed the
4 evidence but found it not credible because apparently plaintiff's
5 handwriting was included in the letters purporting to be authored
6 by Elaine Simonsen. Tr. 21. When viewed together with the ALJ's
7 explanation that the nature of crimes in plaintiff's criminal
8 record and inconsistent statements impaired his credibility, I
9 cannot agree that the ALJ erred in rejecting the statements.

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11 Conclusion

12 The decision of the Commissioner is reversed and the matter
13 remanded.

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15 IT IS SO ORDERED.

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17 Dated this 3 day of January, 2008.

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23 THOMAS M. COFFIN
24 United States Magistrate Judge
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